

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4534 / September 23, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32280 / September 23, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17567

In the Matter of

**AVIVA INVESTORS
AMERICAS, LLC, AS
SUCCESSOR ENTITY TO
AVIVA INVESTORS
NORTH AMERICA, INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940 AND SECTION
9(f) OF THE INVESTMENT COMPANY
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Section 9(f) of the Investment Company Act of 1940 (“Investment Company Act”), against Aviva Investors Americas, LLC (“Aviva” or “Respondent”), as the successor entity to Aviva Investors North America, Inc. (“AINA”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of

1940 and Section 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. Beginning in March 2010 and through December 2011, AINA, a registered investment adviser to various clients arranged cross trade transactions in which three of AINA’s traders (the “Traders”) sold fixed-income securities from certain AINA advisory client accounts to counterparty broker-dealers, and then the next day repurchased the same securities from the same broker-dealers for the accounts of certain other AINA advisory clients. The Traders and the registered representatives at the broker-dealers negotiated the sales and repurchases of the securities at the same time. Approximately 137 of the cross trades were effected between AINA’s registered investment company clients (“RICs”) and certain of AINA’s other clients who were affiliated persons of a RIC or affiliated persons of an affiliated person of a RIC, including insurance companies owned by AINA’s parent company, Aviva plc (“AINA Insurance Clients”), and pooled vehicles not owned by AINA or its parent (“Private Fund Clients”). During the relevant period, an entity under common control with AINA was the sole shareholder of the RIC clients. As a result of these trades, AINA caused certain of its advisory clients to conduct trades with affiliates unwittingly in violation of Sections 17(a)(1) and (a)(2) of the Investment Company Act. An additional 24 trades were effected between AINA Insurance Clients and Private Fund Clients. Aviva plc owned the AINA Insurance Clients and, therefore, AINA was acting as principal for trades involving those clients. As a result of these additional 24 trades, AINA conducted principal trades in violation of Section 206(3) of the Advisers Act. AINA’s violations were caused in part by its failure to adopt and implement adequate policies and procedures to prevent unlawful cross and principal trading effectuated by its trading personnel.

Respondent

2. Aviva Investors Americas, LLC, is a Chicago-based investment adviser owned by Aviva plc, a multi-national insurance company headquartered in the U.K. with insurance and asset management subsidiaries. Aviva has been registered with the Commission since 2012 when it succeeded and assumed certain asset management functions of Aviva Investors North America, Inc., a Des Moines, Iowa-based investment adviser registered with the Commission and also owned by Aviva plc. As of October 2015, Aviva managed \$6 billion in assets in 44 accounts. The conduct described in these proceedings occurred when Aviva was operating as AINA. As of December 2011, AINA managed \$60 billion for 53 accounts. AINA withdrew its registration with the Commission effective on March 28, 2014.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

3. AINA maintained an advisory agreement with each client. The agreements included written client investment objectives and guidelines. AINA used these written objectives and guidelines, among other things, to determine what to buy and sell in client accounts. AINA had discretionary authority over all of the accounts of the clients involved in the cross trades and principal transactions at issue.

4. There were times when AINA decided to sell securities out of client accounts due to changes in market conditions, when a security no longer complied with client investment objectives or portfolio guidelines, because a fund was being liquidated or partially liquidated, or there was a need to return capital to investors. In some cases, AINA believed that the securities were nevertheless good investments and therefore, wanted to move them into another client's portfolio. AINA could accomplish this through cross trades. Such trades can benefit clients because they enable investment advisers to transfer securities between clients without exposing the security to the market. Doing so can save transaction and market costs that clients would otherwise pay to the executing broker-dealers. However, cross trades also create conflicts of interest for the adviser, which has a fiduciary duty of loyalty to its clients, and must seek to obtain best execution for both its buying and selling clients.

5. To guard against potential concerns that affiliated persons of a RIC may engage in self-dealing transactions with the fund, Sections 17(a)(1) and 17(a)(2) of the Investment Company Act generally prohibit any affiliated person of a RIC, or any affiliated person of such affiliated person, acting as principal, from knowingly selling a security to, or purchasing a security from, the investment company unless the person first obtains an exemptive order from the Commission pursuant to Section 17(b) of the Investment Company Act. The interpositioning of a dealer in these transactions does not remove them from the prohibitions of Section 17(a). See Section 48(a) of the Investment Company Act; Exemption of Certain Purchase or Sale Transactions Between a Registered Investment Company and Certain Affiliated Persons Thereof, IC Rel. No. 11136, 1980 WL 29973, Note 10 (Apr. 21, 1980) (the "17a-7 Release").

6. Rule 17a-7 under the Investment Company Act ("Rule") exempts from the prohibitions of Section 17(a) certain purchases and sales between RICs and certain affiliated persons, where the affiliation arises solely because the two have a common investment adviser, common directors, and/or common officers, provided that the transactions are effected in accordance with the requirements set forth in Rule 17a-7. The Rule provides that to the extent the adviser pays a brokerage commission, fee or other remuneration in connection with cross transactions, the transactions would not be eligible for an exemption under the Rule. Also, the adviser must execute the cross trade in accordance with the Rule's method for determining the "current market price," which, for most bonds, is defined as "the average of the highest current independent bid and lowest current independent offer, determined on the basis of reasonable inquiry."

7. Consistent with Sections 17(a)(1) and 17(a)(2) of the Investment Company Act, AINA's written internal cross trading policies and procedures prohibited transactions involving RICs and affiliated persons of RICs, absent an exemptive order issued by the Commission.

8. In addition, there were transactions between AINA clients in which AINA acted as principal. These trades occurred between the AINA Insurance Clients and the Private Fund Clients. AINA's parent company, Aviva plc, was a 100% owner of the Insurance Clients and therefore AINA was acting as principal for trades involving those clients. Section 206(3) of the Advisers Act restricts principal transactions, requiring written disclosure to, and consent from, the clients.

9. Consistent with Section 206(3), AINA's written policies and procedures permitted these transactions only if, among other things, the clients consent to the transaction and the CCO of AINA approved it.

AINA Engaged in Prohibited Securities Transactions

10. To effect the cross trades, AINA interposed third-party broker-dealers into the sale and repurchase transactions and had the trades executed on an overnight basis. Specifically, AINA sold securities from one AINA client account to a broker-dealer and then the next day repurchased those securities from the broker-dealer for another AINA client account. The sale and repurchase involved the same security, same quantity, same price, but with a 1/8 markup collected by the broker-dealer. AINA paid the markup to compensate the broker-dealers for the administrative and other costs they incurred in connection with the transactions.

11. Prior to the sale transactions, AINA and the registered representatives at the broker-dealers formed an agreement or understanding that the broker-dealers would purchase securities from AINA's selling client account and then sell the same securities to AINA's purchasing client account.

12. By interposing the broker-dealer into prearranged sale and repurchase transactions between RIC clients and the AINA Insurance Clients and Private Fund Clients, AINA caused the affected client accounts to engage in cross trades prohibited by the Investment Company Act, without having obtained an exemptive order or being able to rely on an exemptive rule.

13. In addition, by effecting the prearranged sale and repurchase transactions between AINA Insurance Clients and Private Fund Clients, without providing written notification and obtaining consent from Private Fund Clients on a per-transaction basis, AINA engaged in prohibited principal transactions in violation of the Advisers Act.

AINA Failed to Detect and Prevent Prohibited Securities Transactions

14. During the relevant period, AINA's compliance department identified certain cross trading as a risk and took certain steps to attempt to identify and/or prevent impermissible cross trading. Among other steps, the compliance department formalized a review process and drafted

guidelines for the compliance department to ensure compliance with AINA's cross trading policy. The written guidelines stated that the firm's cross trading restrictions could apply to sale/buybacks occurring within a few days of each other and using a broker to effect the transactions. As part of the process, the compliance department would generate reports to identify sale/buybacks occurring within a three day window.

15. Despite AINA's intention to identify and prevent impermissible cross trading by its trading personnel, the firm failed to prevent and detect the cross and principal trades at issue here. This was due in part because during the relevant time period the individuals working on cross trading within AINA's compliance department were underqualified, under resourced, and required additional training and resources to effectively implement AINA's trading restrictions. Senior members of the compliance department raised the need for additional compliance resources on multiple occasions to AINA's senior management. Those requests were not met.

16. The inexperience of the assigned compliance personnel and need for additional resources contributed to AINA's failure to detect and prevent the cross and principal trades at issue. Specifically, during the relevant time period, AINA assigned one of its compliance staffers to handle many of the firm's compliance issues. Because of the compliance staffer's heavy workload, he delegated the cross trade review to a low-level administrative assistant in the compliance department. The assistant reviewed trade reports generated by the compliance department, but did not do so on a consistent basis. Some of the unlawful cross trades at issue were included in the reports, but she did not identify them because she reviewed the reports looking only for same-day trades between clients. AINA did not employ additional resources or take other steps to detect whether the sale and repurchase transactions complied with the firm's policies and the federal securities laws' restrictions on cross trading and principal trades.

17. In the fall of 2010, one of the Traders asked the same compliance staffer whether he could sell securities held in one client account to a broker-dealer, repurchase from that broker-dealer those same securities in another client account on the next day, and pay the broker-dealer a fixed commission for executing the transactions. The staffer advised the Trader that such trades were permissible as long as there was "best execution" for the trades and "pricing documentation." While the compliance staffer researched the issue briefly, the staffer did not inquire whether the trades were prearranged or otherwise investigate whether the trades complied with the firm's policies or the federal securities laws related to cross trades and principal trades. The staffer did not tell the Trader that an exemptive order from the Commission was necessary to carry out the cross trades involving the RICs or that providing written notification or obtaining client consent from the Private Fund Clients on a transaction-by-transaction basis was necessary to carry out the principal trades between the AINA Insurance Clients and Private Fund Clients.

18. In 2013, Aviva retained a compliance consultant ("Compliance Consultant") to evaluate and make recommendations regarding Aviva's fixed income and trading function in the United States and the investment process, including compliance and risk management and supervisory oversight. Among other things, the Compliance Consultant reviewed Aviva's compliance policies, procedures and control processes as they relate to cross trading and principal transactions, and recommended remedial steps designed to ensure that Aviva's

compliance control systems are reasonably designed to prevent violations of the federal securities laws pertaining to cross trading and principal transactions. Aviva has represented to the Commission that it has taken steps to address and/or implement the Compliance Consultant's recommendations regarding the cross and principal trade restrictions discussed above, and has continued to evaluate the effectiveness of its policies and processes and make necessary changes to improve them. In addition, Aviva has increased the resources dedicated to compliance and hired experienced professionals.

Violations

19. As a result of the conduct described above, Respondent caused certain of its advisory clients unwittingly to violate Sections 17(a)(1) and 17(a)(2) of the Investment Company Act, which, in relevant part, make it unlawful for any affiliated person or promoter of or principal underwriter for a RIC or any affiliated person of such a person, . . . acting as principal (1) knowingly to sell any security or other property to such RIC or to any company controlled by such RIC, or (2) knowingly to purchase from such RIC, or from any company controlled by such RIC, any security or other property, unless the transaction complies with the exemptive requirements of Rule 17a-7 under the Investment Company Act, or the adviser obtains an exemptive order under Section 17(b) of the Investment Company Act. Respondent did not seek an exemptive order for the cross transactions effected by Respondent. Also, the transactions were not eligible for the exemption from the prohibition based on Rule 17a-7 because the affiliation between the RICs and the Private Fund Clients did not arise solely because the two have a common investment adviser. Even if the transactions were eligible for the exemption, they did not meet the requirements in Rule 17a-7 given that the trades were not executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security, and were made through one or more broker-dealers who received remuneration in connection with the transactions.

20. As a result of the conduct described above, Respondent violated Section 206(3) of the Advisers Act, which prohibits an investment adviser, acting as principal for its own account, from knowingly selling securities to or purchasing securities from the adviser's clients without disclosing to such clients in writing before the completion of such transactions the capacity in which the adviser is acting and obtaining the consent of the clients to such transactions. Here, trades occurred between the AINA Insurance Clients and the Private Fund Clients. Respondent's parent company was a 100% owner of the Insurance Clients and therefore Respondent was acting as principal for trades involving those clients. However, the firm did not notify or obtain consent from the Private Fund Clients and therefore, violated Section 206(3) of the Advisers Act.

21. As a result of the conduct described above, Respondent violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that registered investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and rules. Specifically, Respondent failed to implement procedures reasonably designed to ensure compliance with the Advisers Act regarding principal transactions.

Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 203(k) of the Advisers Act and Section 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 206(3) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, and Sections 17(a)(1) and 17(a)(2) of the Investment Company Act.

B. Respondent shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$250,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Aviva, as successor entity to AINA, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Steven L. Klawans, Assistant Director, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 900, Chicago, Illinois, 60604 or such other address as the Commission staff may provide.

By the Commission.

Brent J. Fields
Secretary